

**STATE OF NEW MEXICO  
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION  
OF SOUTH CENTRAL SOLID WASTE  
AUTHORITY FOR A SOLID WASTE  
FACILITY PERMIT FOR CHAPARRAL  
COLLECTION AND RECYCLING CENTER**

**No. SWB 21-44**

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**SOLID WASTE BUREAU AND SOUTH CENTRAL SOLID WASTE AUTHORITY'S  
JOINT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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Pursuant to 20.1.4.500(B) NMAC, the Solid Waste Bureau ("Bureau") of the Resource Protection Division ("Division") of the New Mexico Environment Department ("Department"), and the South Central Solid Waste Authority ("SCSWA") submit the following joint findings of fact and conclusions of law.

**PROPOSED FINDINGS OF FACT**

**I. The Parties and Background**

1. The Bureau is charged with reviewing the Application in this matter and making a recommendation regarding whether the Application should be approved by the Secretary of the Environment Department. NMSA 1978, §§ 9-7A-4 and 6 (1991); 74-1-7(A)(14) (2000); 74-9-24 (2011).

2. The SCSWA ("Applicant") owns and operates the Chaparral Collection and Recycling Center ("Facility"). [AR No. C-9; NMED Ex. 1, p.4].

3. Pursuant to the New Mexico Solid Waste Act, NMSA 1978, Sections 74-9-1 through 74-9-43 (1990, as amended through 2011) ("Act"), and the New Mexico Solid Waste Rules ("Rules"), 20.9.2 through 20.9.10 NMAC, the Applicant submitted the final version of the

application for the permit for the Facility on August 12, 2021 (“Application”). [AR No. C-9; NMED Ex. 1, p.6].

4. The Applicant is seeking a Solid Waste Facility Permit for the Facility. [AR No. C-9; NMED Ex.1, p.4].

5. A public hearing was held on Wednesday, November 10, 2021, at 5:00 p.m. using an internet video conferencing platform (WebEx), with call-in option. [AR No. C-10; Tr. 00:00-01:06:50].

6. The Applicant and the Bureau submitted Statements of Intent to Present Technical Testimony at the public hearing. No other parties submitted Statements of Intent.

7. No public comment was received during the public hearing. [Tr. 8:31-9:30; 39:38-39:50; 1:03:52-1:03:59].

8. James Dyer, Hydrologist-A in the Permit Section of the Bureau, and George Schuman, Permit Section Manager, submitted written technical testimony on behalf of the Bureau and also provided oral testimony at the hearing. [NMED Ex. 1, 3 ;Tr. 40:18-1:03:15].

9. Mr. Matt Kingsley, P.E., Principal employed by Parkhill, and Mr. Patrick Peck, Director for SCSWA, submitted written technical testimony on behalf of the Applicant and also provided oral testimony at the hearing. [SCSWA Exhibits 2(a), 2(b), 3(a), and 3(b); Tr. 13:00-39:24].

## **II. The Facility**

10. The Facility is owned and operated by the Applicant. [NMED Ex. 1, p.4].

11. The Facility is located at 180 Chaparral Drive, west of McCombs Road and north of the State Line Drive, in Chaparral, Doña Ana County, New Mexico 88081. [NMED Ex. 1, p.4].

12. The Facility is an existing registered collection center that now meets the definition of a transfer station, pursuant to 20.9.2.7(T)(3) NMAC, as it is a facility managed for the collection and accumulation of solid waste with an operational rate of greater than 240 cubic yards per day monthly average. [NMED Ex. 1, p.2, 4].

13. The Facility was originally designed to handle up to 200 tons per day and currently receives approximately 82 tons per day of solid waste, which exceeds 240 cubic yards per day based on standard industry conversion equations. [NMED Ex. 1, p.5].

14. A description of the Facility is provided in Volume I, Section 1, Introduction and Project Description; Volume II, Section 1, Plan of Operations; Section 2, Land Use & Zoning in the final version of the Application. [AR No. C-9; NMED Ex. 1, p.4].

15. The Facility occupies approximately 10 acres and a detailed legal description and the associated lease agreement for the use of the property is provided in Attachment I.1.B of the final version of the Application. [AR No. C-9; NMED Ex. 1, p.4].

16. The Facility's waste-receiving hours of operation are 7:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to 4:00 p.m. Saturday and Sunday. [NMED Ex. 1, p.5].

17. The Facility accepts solid waste deliveries from residential and commercial collection vehicles during operating hours. Residential deliveries of recyclables will also be accepted during operating hours at the on-site Public Drop-Off Area. [NMED Ex. 1, p.5].

18. The accumulated waste is transferred to the Applicant's Corralitos Regional Landfill for final disposal. [AR No. C-9, Volume I, Part 3; Volume II, Section 1; NMED Ex. 1, p.5].

19. The expected life of the Facility extends beyond the proposed 20-year permit period. [NMED Ex. 1, p.5].

### **III. Completeness Determination**

20. The Bureau reviewed the Chaparral Collection and Recycling Center permit Application in several steps for compliance with the Act and the Rules. [NMED Ex. 1, p.3].

21. On April 16, 2020, the Applicant submitted to the Bureau the initial permit Application. [AR No. C-1; NMED Ex. 1, p.3].

22. The Bureau reviewed the initial Application and issued a first RAI on August 14, 2020. [AR No. C-3; NMED Ex. 1, p.3].

23. On December 9, 2020, the Applicant submitted the first revised Application to the Bureau. [AR No. C-5; NMED Ex. 1, p.3].

24. The Bureau reviewed the revised Application and issued a second RAI on March 8, 2021. [AR No. C-6; NMED Ex. 1, p.3].

25. On May 5, 2021, the Applicant submitted its second revised Application to the Bureau. [AR No. C-7; NMED Ex. 1, p.3; NMED Ex. 3, p.5].

26. The Bureau deemed the second revised Application administratively complete on August 3, 2021. [AR No. C-8; NMED Ex. 1, p.3; NMED Ex. 3, p.5].

27. Acceptance of a permit application as administratively complete allows the application to be processed according to NMED's Permit Procedures, pursuant to 20.9.3.17(D) NMAC. [NMED Ex. 3, p.5].

28. The Applicant submitted its final Application to the Bureau on August 12, 2021. [AR No. C-9; NMED Ex. 1, p.3].

29. The final date-stamped version of the Application and any conditions imposed by the Secretary will become the permit if the Application is approved by the Secretary. [AR No. C-9; NMED Ex. 3, p.5].

#### **IV. Permit Application**

30. The Applicant is seeking a Solid Waste Facility Permit based on the volume of waste that is currently being received by the Facility, in compliance with 20.9.2.7(C)(6) NMAC, which limits the operational rate of collection centers to less than 240 cubic yards per day monthly average, and 20.9.2.7(T)(3) NMAC, which requires a permit for a transfer station for a facility that has an operational rate of more than 240 cubic yards per day monthly average. [NMED Ex. 1, p.4].

31. A description of the application can be found in the Submittal Letter in Volume 1 of the final version of the Application. [AR No. C-9; NMED Ex. 1, p.4].

##### **A. 20.9.3.8 NMAC – Permit Application Requirements**

32. The Applicant submitted the initial version of the Application on April 16, 2020. [AR No. C-1; NMED Ex. 1, p. 5].

33. The Applicant submitted the final version of the Application to the Bureau on August 12, 2021. [AR No. C-9; NMED Ex. 1, p. 5].

34. Permit application requirements at 20.9.3.8 NMAC are addressed in the final version of the Application. [AR No. C-9, Volume 1, Part 3, & Volume II, Section 1; NMED Ex. 1, p. 5].

35. The Applicant is the Owner and Operator of the facility. [NMED Ex. 1, p. 5].

36. The mailing address for the Applicant is South Central Solid Waste Authority, 2865 W. Amador, Las Cruces, NM 88005. [NMED Ex. 1, p. 5].

37. The Applicant submitted site information, a facility Site Plan, and a Legal Description and Warranty Deed. [AR No. C-9; NMED Ex. 1, p. 5].

38. The Legal Description identifies the property as an area of approximately 10 acres owned by Doña Ana County and leased by the South Central Solid Waste Authority. [AR No. C-9, Volume I, Part 3; NMED Ex. 1, p. 6].

39. According to the Doña Ana Land Use Map (Figure III.2.5), land uses in the vicinity are currently defined as T2, T3, T5, and institutional by the Doña Ana County Geospatial Committee 2013. These zoned adjacent areas are defined as Rural Zone, Neighborhood Zone, Town Center Zone, institutional, respectively. The site is mostly surrounded by rural land. To the north/northeast of the site are rural and town properties. To the south/southwest of the site are rural and residential properties. [AR No. C-9, Volume I, Part 3, Figure I.3.1; NMED Ex. 1, p. 6].

40. The Facility obtains potable water from the Colquitt Water Supply and utilizes an on-site septic system. [AR No. C-9, Volume I, Part 3, Figure I.3.1; NMED Ex. 1, p. 6].

41. Prevailing winds in the vicinity blow from the north and west-southwest approximately 3% of the time, and calm winds occur approximately 10% of the time. [AR No. C-9, Volume I, Part 3, Figure I.3.1; NMED Ex. 1, p. 6].

42. The Applicant provided evidence of compliance with siting criteria for transfer stations. [AR No. C-9, in Volume I, Part 3; Volume I, Part 4; Volume III; NMED Ex. 1, p.6].

43. The Applicant provided the Construction Plans utilized in the site development and facility structure construction. [AR No. C-9, Volume I, Part 3; NMED Ex. 1, p.6].

44. The Applicant provided a Plan of Operations. The Plan of Operations describes routine operational practices at the facility, including hours of operation, a list of materials the facility is permitted to receive, operational processes, design capacity, expected life of the facility, final disposition of all types of waste collected at the facility, alternative waste handling processes

in case of facility shutdown or equipment failures, and record-keeping protocols. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.6].

45. The Applicant provided a Transportation Plan. The Transportation Plan describes the anticipated transportation routes to the facility, and from the facility to Corralitos Regional Landfill and provides the number and type of vehicles accessing the facility and transporting waste to the Landfill. [AR No. C-9, Volume II, Section 4; NMED Ex. 1, pp.6-7].

46. The Applicant provided a Contingency Plan. It describes actions to be taken in the event of fires, explosions, or the release of contaminants at the facility. [AR No. C-9, Volume II, Section 2; NMED Ex. 1, p.7].

47. The Applicant provided a Closure/Post-Closure Plan (“CPCC Plan”). The CPCC Plan describes the actions to be taken upon closure of the facility and includes a cost estimate for facility closure. [AR No. C-9, Volume II, Section 3; NMED Ex. 1, p.7].

48. Pursuant to 20.9.9.8 NMAC, ground water monitoring is not required at transfer stations, thus the Application does not include a ground water monitoring system plan. [NMED Ex. 1, p.7].

49. The Applicant agrees to comply with the requirements of this section and addresses them in Volume I, Section 3 of the Application. [NMED Ex. 1, p.7].

50. The Application meets all requirements of 20.9.3.8 NMAC. [NMED Ex. 1, p.7]

**B. 20.9.3.15 NMAC – Additional Permit Application Requirements for Transfer Stations**

51. The Applicant has complied with the additional permit application requirements for transfer stations pursuant to 20.9.3.15 NMAC. [NMED Ex. 1, p.7].

52. The Applicant provided plans and elevations, drawn to scale, of all existing structures used for handling and storage of solid waste, and diversion of recyclables. [AR No. C-9, Volume I, Part 3; NMED Ex. 1, p.7].

53. The Applicant provided a Site Plan of the facility indicating the location of storage, loading and unloading areas, fencing and gates, entrances, exits, access roads and administrative offices. [AR No. C-9, Volume I, Part 3 & Volume II, Section 1; NMED Ex. 1, p.7].

54. The Facility obtains potable water from the Colquitt Water Supply and utilizes an on-site septic system. [AR No. C-9 Volume 1, Part 3, & Volume II, Section 1; NMED Ex. 1, p.7].

55. Solid waste is transferred from the Facility to the Corralitos Regional Landfill daily. [AR No. C-9, Volume 1, Part 3, & Volume II, Section 1; NMED Ex. 1, p.7].

56. The frequency of removal, method of transport and final destination of the municipal solid waste, white goods, bulky items, tires, brush/green waste, e-waste, scrap metals and recyclables are discussed in the Application. [AR No. C-9, Volume I, Part 3, & Volume II, Section 1; NMED Ex. 1, p.7-8].

57. Specific operational procedures, including traffic patterns and procedures for handling recyclables are addressed. [AR No. C-9, Volume I, Part 3; Volume II, Section 1; & Volume II, Section 4; NMED Ex. 1, p.8].

58. The Applicant provided a Waste Screening and Inspection Plan. [AR No. C-9, Volume II, Section 5; NMED Ex. 1, p.8].

59. The Applicant provided a Contingency Plan that includes the procedures for handling unauthorized waste delivered to the facility. [AR No. C-9, Volume II; Section 2; NMED Ex. 1, p.8].



60. The Applicant provided a demonstration that the facility can handle the current waste stream. [AR No. C-9, Volume I, Part 3; NMED Ex. 1, p.8].

61. The Applicant addressed the requirements of this section and agrees to comply with the requirements. [AR No. C-9, Volume 1, Part 3; NMED Ex. 1, p.8].

**C. 20.9.4.8 NMAC – Maximum Size**

62. The maximum size of a solid waste facility may not exceed 500 acres, pursuant to 20.9.4.8 NMAC. [NMED Ex. 1, p.8]

63. The Facility property is approximately 10 acres. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.8].

64. The Application satisfies the requirements of 20.9.4.8 NMAC. [AR No. C-9; NMED Ex. 1, p.8].

**D. 20.9.4.12 NMAC – Siting Criteria for Transfer Stations and Processing Facilities**

65. The siting criteria for transfer stations and processing facilities apply to facilities that are initially permitted after the effective date of the Rules. [NMED Ex. 1, p.8].

66. The siting criteria for transfer stations first appeared in the current (August 2, 2007) version of the Rules; earlier versions of the Rules (called Solid Waste Management Regulations) did not contain siting criteria for transfer stations. [NMED Ex. 1, p.8].

67. The siting criteria for transfer stations apply to this Facility and the Facility complies with the siting criteria for transfer stations contained in 20.9.4.12 NMAC. [NMED Ex. 1, p.9].

68. The Applicant provided demonstrations that the facility is not located within a floodplain, watercourse, or wetland, or in an unstable area (e.g. land exhibiting karst features or

that is prone to landslides). [AR No. C-9, Volume I, Part 4, & Volume III, Sections 1 and 2; NMED Ex. 1, p.9].

69. The Applicant provided demonstrations that the facility is not located within 250 feet of an institution, school, place of worship, or hospital. [AR No. C-9, Volume I, Part 4, & Volume III, Section 1; NMED Ex. 1, p.9].

70. 20.9.4.12(B) NMAC requires the Facility not be located within 250 feet of a permanent residence. The Applicant provided a demonstration of the nearest residence located approximately 2,500 feet from the Facility. [AR No. C-9, Volume I, Part 4; NMED Ex. 1, p.9].

71. The Applicant provided a demonstration that the facility is not located within historically or archaeologically significant sites. [AR No. C-9, Volume I, Part 4, & Volume III, Section 1; NMED Ex. 1, p.9].

72. The Application satisfies the requirements of 20.9.4.12 NMAC. [AR No. C-9; NMED Ex. 1, p.9].

#### **E. 20.9.5.8 NMAC – General Operating Requirements for All Solid Waste Facilities**

73. The primary objectives of the transfer station engineering design and Plan of Operations are to ensure that facility operations do not cause a public nuisance, and to protect public health, welfare, and the environment. [NMED Ex. 1, p.9].

74. Signs have been installed at the entrance to the facility site as required by the Solid Waste Rules. [AR No. C-9; NMED Ex. 1, p.9].

75. The Plan of Operations, Volume II, Section 1 of the final Application, states that a certified transfer station operator will be on site during operational hours and a written operating record will be maintained in accordance with 20.9.5.16 NMAC. [NMED Ex. 1, p.10].

76. A waste screening plan and personnel training program for load inspections to detect and prevent the disposal of unauthorized waste are discussed in the Plan of Operations. [AR No. C-9; NMED Ex. 1, p.10].

77. The Waste Screening and Inspection Plan describes in detail the protocols to be employed at the Facility for waste screening/inspection and procedures to be followed in the event that unauthorized waste is discovered. [AR No. C-9; NMED Ex. 1, p.10].

78. The Contingency Plan contains requirements for: notification of the Bureau in the event of an incident at the Facility; maintenance of the Contingency Plan in a readily accessible location for employees on duty; and employee training related to the implementation of the Contingency Plan. [AR No. C-9; NMED Ex. 1, p.10].

79. Pursuant to 20.9.5.8.C NMAC, the Applicant understands that the Secretary may authorize temporary changes in operation or facility design in emergency situations if there is imminent danger to public health, welfare or the environment. [AR No. C-9; NMED Ex. 1, p.10].

80. The Applicant agrees to comply with the requirements of this section and addresses them in the Application, Volume I, Part 5 of the final version of the Application. [AR No. C-9; NMED Ex. 1, p.10].

81. The Application meets all requirements of 20.9.5.8 NMAC. [NMED Ex. 1, p.10].

#### **F. 20.9.5.11 NMAC – Additional Transfer Station Operating Requirements**

82. The Facility does not accept any special wastes as indicated in Volume I, Part 5 of the final version of the Application. [AR No. C-9; NMED Ex. 1, p.11].

83. Containers utilized by the Facility are leak-proof and constructed of non-biodegradable materials. [AR No. C-9, Volume I, Part 5; NMED Ex. 1, p.11].

84. Methods to control litter are outlined in the Plan of Operations provided in Volume II, Section 1 of the final version of the Application. [AR No. C-9; NMED Ex. 1, p.11].

85. Recycling operations are conducted in a safe manner as described in Volume II, Section 1 of the final version of the Application. [AR No. C-9; NMED Ex. 1, p.11].

86. Methods to prevent and extinguish fires are described in the Contingency Plan provided in Volume II, Section 2 of the final version of the Application. [AR No. C-9; NMED Ex. 1, p.11].

87. Based upon 2018 total scale receipts, the Facility currently receives approximately 82 tons per day of solid waste. [NMED Ex. 1, p.11].

88. The Facility was originally designed to handle up to 200 tons per day. [NMED Ex. 1, p.11].

89. Operations over the past five years have demonstrated that the Facility has adequate unloading area to meet demands of peak periods. [NMED Ex. 1, p.11].

90. The large size of the property dedicated to the Facility (10 acres) provides ample off-street parking for transfer vehicles and precludes the need for on-street parking of transfer vehicles containing putrescible waste. [AR No. C-9, Volume I, Part 5, page I.5-6; NMED Ex. 1, p.11].

91. Waste is transported daily from the Facility to Corralitos Colorado Landfill. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.11].

92. The Plan of Operations describes recycling operations at the Facility. The Facility will conduct all recycling operations in a safe and sanitary manner confined to an area remote from the tipping floor and in a manner that does not interfere with transfer operations in accordance with 20.9.5.11(D) NMAC. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.11-12].

93. Recyclables are transported to off-site contracted materials recovery facilities. All recyclables managed at the CCRC facility will be transported off-site in a timely manner when the storage bins are full, in accordance with 20.9.5.11(E) NMAC. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.12].

94. Recyclable materials are stored in a manner that does not create a nuisance, harbor vectors, or create a public health hazard. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.12].

95. The Applicant agrees to comply with the requirements of this section and addresses them in the Application, Volume I, Part 5. [AR No. C-9; NMED Ex. 1, p.12].

96. The Application meets all requirements of 20.9.5.11 NMAC. [NMED Ex. 1, p.12]

**G. 20.9.5.15 NMAC – Contingency Plan for Emergencies**

97. The Facility has developed the Contingency Plan for emergencies in accordance with 20.9.5.15 NMAC. [AR No. C-9, Volume II, Section 2; NMED Ex. 1, p.12].

98. The Contingency Plan will be reviewed and updated as necessary in accordance with the protocol outlined in the Plan. [AR No. C-9, Volume I, Part 5, and Volume II, Section 2; NMED Ex. 1, p.12].

99. Copies of the Contingency Plan will be maintained in a readily accessible location at the transfer station and will be made available to local emergency agencies. [AR No. C-9, Volume II, Section 2; NMED Ex. 1, p.12].

100. The Contingency Plan addresses all topics identified in 20.9.5.15 NMAC. [NMED Ex. 1, p.12].

101. Topics of particular importance addressed by the Plan include: protocols for actions to be taken in response to fires, explosions, or releases of contaminants; names and telephone numbers of the emergency coordinators for the Facility; a list describing all available emergency

equipment and the locations of such equipment; and an evacuation plan for exiting the Facility in the event of an emergency. [AR No. C-9, Volume II, Section 2; NMED Ex. 1, p.12].

102. The Applicant agrees to comply with the requirements of this section and addresses them in the final version of the Application, Volume I, Part 5. [AR No. C-9; NMED Ex. 1, p.13].

103. The Application meets all requirements of 20.9.5.15 NMAC. [NMED Ex. 1, p.13].

#### **H. 20.9.5.16 NMAC – Record Keeping and Annual Reports**

104. The Plan of Operations describes the record keeping and annual reporting protocols to be followed by the Facility. These protocols comply with the requirements of 20.9.5.16 NMAC. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.13].

105. Facility operating records will be maintained during the active life of the Facility and will document daily operations or closure activities. The records for the current month and the preceding 12 months will be maintained at the Facility. [AR No. C-9, Volume I, Part 5, page I.5-11; NMED Ex. 1, p.13].

106. Key information to be maintained in the operating record includes: the type and weight or volume of each load of waste and non-waste materials received; origin of the waste and non-waste materials received; names of commercial haulers who deliver waste to the Facility; load inspection records; destination of solid waste if transported out of state; and financial assurance documentation. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.13].

107. The Applicant will submit annual reports to the Secretary within 45 days from the end of each calendar year, unless otherwise directed by NMED, summarizing operations for the past year. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.13].

108. The report will provide the information detailed in Section 20.9.5.16.D NMAC, as listed on the applicable sections of the most current NMED Solid Waste Facilities Annual Report. [NMED Ex. 1, p.13].

109. Pursuant to 20.9.5.16(E) NMAC, the Applicant will furnish in a timely and organized manner any records or plans required by the Solid Waste Rules that are requested by the Secretary and will make such records or plans available for inspection upon request. [AR No. C-9, Volume 1, Part 5, page I.5-13; NMED Ex. 1, p.13].

110. The Applicant agrees to comply with the requirements of this section and addresses them in the Application, Volume 1, Part 5. [AR No. C-9; NMED Ex. 1, p.14].

111. The Application meets all requirements of 20.9.5.16 NMAC. [NMED Ex. 1, p.14].

**I. 20.9.6.8 NMAC – General Requirements for Closure and Post Closure Care;**

**20.9.6.12 NMAC – Closure and Post-Closure Requirements for Other Solid Waste Facilities**

112. The Applicant submitted a Closure Plan in the Application. [AR No. C-9, Volume II, Section 3; NMED Ex. 1, p.14].

113. The Closure Plan is a “written closure and post-closure care plan” as required by 20.9.6.8.B NMAC and addresses the applicable requirements of 20.9.6.8 and 20.9.6.12 NMAC. [NMED Ex. 1, p.14].

114. The Closure Plan describes the steps necessary to complete closure of the facility. [NMED Ex. 1, p.14].

115. Closure activities include removal of all waste and recyclables from the property, testing of soil and/or groundwater (if deemed necessary), cleaning and maintenance of facility

improvements, and submittal of a Closure Report documenting all closure actions. [AR No. C-9, Volume II, Section 3; NMED Ex. 1, p.14].

116. Post-closure care is not expected to be required at Chaparral Collection and Recycling Center. [NMED Ex. 1, p.14].

117. The Applicant agrees to comply with the requirements of these sections and addresses them in the Application, Volume I, Part 6. [AR No. C-9; NMED Ex. 1, p.14].

118. The Application meets all requirements of 20.9.6.8 and 20.9.6.12 NMAC. [NMED Ex. 1, p.14].

**J. 20.9.7.8 NMAC – General Provisions (Solid Waste Facility Operator Certification);**

**20.9.7.13 NMAC – Suspension or Revocation of Certification**

119. The Plan of Operation states that a certified transfer station operator or designated representative will be present at the Facility during operating hours. [AR No. C-9, Volume II, Section 1; NMED Ex. 1, p.14].

120. Operator certification is valid for a period of three years from the date of issuance in accordance with 20.9.7.8(C) NMAC. [NMED Ex. 1, p.14-15].

121. The Bureau has the discretion to certify an operator with alternate training in accordance with 20.9.7.8.D NMAC. [NMED Ex. 1, p.15].

122. Alternate training must be equivalent or more extensive than the coursework offered by the Bureau and must be approved by the Bureau. [NMED Ex. 1, p.15].

123. Per 20.9.7.13 NMAC, an operator's certification may be suspended or revoked for failure to comply with the terms or conditions of a solid waste facility permit; fraud, deceit, or submission of inaccurate qualification information; violation of the Solid Waste Act or Rules; or failure to comply with the New Mexico Parental Responsibility Act. [NMED Ex. 1, p.15].



124. The Applicant agrees to comply with the requirements of these sections and addresses them in the final version of the Application. [AR No. C-9, Volume I, Part 7; NMED Ex. 1, p.15].

125. The Application meets all requirements of 20.9.7.8 and 20.9.7.13 NMAC. [NMED Ex. 1, p.15].

**K. 20.9.10.8 NMAC – Applicability and Effective Date (Financial Assurance);**

**20.9.10.9 NMAC – Financial Assurance for Closure and Nuisance Abatement;**

**20.9.10.20 NMAC – Local Government Reserve Fund**

126. A financial assurance estimate for closure of the facility is included in the CPCC Plan contained in the final version of the Application. [AR No. C-9, Volume II, Section 3; NMED Ex. 1, p.15].

127. The total estimate for facility closure is \$57,112.00. This amount was clarified during the public hearing. [AR No. C-9, Volume II, Section 3, Attachment II.3.A; NMED Ex. 1, p.15; Tr. 21:57-22:16].

128. Preparation of revised closure cost estimates on an annual basis is required by the Rules at 20.9.10.9(A)(3) NMAC. [NMED Ex. 1, p.15].

129. The Applicant agrees to perform annual reviews of closure cost estimates and place updated closure cost estimates in the facility operating record. [AR No. C-9, Volume I, Part 10, pg. I.10-3; NMED Ex. 1, p.15].

130. The Applicant has elected to use the local government reserve fund as the financial assurance mechanism for the Facility. [AR No. C-9, Volume I, Part 10, pg. I.10-5; NMED Ex. 1, p.15].

131. The local government reserve fund is an approved mechanism identified in 20.9.10.13 NMAC and 20.9.10.19 NMAC. [NMED Ex. 1, p.15].

132. Per 20.9.10.20(A) NMAC, in order to use the local government reserve fund, the reserve fund shall be created by resolution of the governing body specifying the use of funds only for purposes of closure, post-closure care, phase I and phase II assessments, or corrective action for the facility. [NMED Ex. 1, p.16].

133. The reserve fund shall specify that the funds shall be used for closure, post-closure care, phase I and phase II assessments and corrective action costs in compliance with 20.9.2 - 20.9.10 NMAC and orders issued pursuant to such rules by the Secretary. [AR No. C-9, Volume I, Part 10, page I.10-5; NMED Ex. 1, p.16].

134. The Applicant is required to pass a resolution for the Reserve Fund prior to the issuance of the Permit. SCSWA complied with the requirements of 20.9.10.20(A) and (B) NMAC when the Resolution was passed on October 21, 2021. [AR No. C-9, Volume I, Part 10, page I.10-5; NMED Ex. 1, p.16; Tr. 50:42-51:48].

135. Per 20.9.10.20(B) NMAC, the local government shall file a copy of the resolution with the Department. SCSWA filed a copy with the Bureau on November 4, 2021. [NMED Ex. 1, p.16].

136. The local government shall file audit reports of the reserve fund annually with the department. [NMED Ex. 1, p.16].

137. The Applicant agrees to comply with the requirements of these sections and addresses them in the final version of the Application. [AR No. C-9, Volume I, Part 10; NMED Ex. 1, p.16].

138. The Application meets all requirements of 20.9.10.20 NMAC. [NMED Ex. 1, p.16].

## **V. Public Notice Content**

139. The public notice regarding the public hearing on the permit application for Chaparral Collection and Recycling Center was submitted to the Hearing Clerk on September 10, 2021. [AR No. C-10; NMED Ex. 1, p.19-20].

140. The notice contains the following information:

- a. Actions requested by the Application;
- b. Date, time, and information on how to participate in the virtual hearing;
- c. Names, addresses, and contact information of the Applicant;
- d. Description of the permit application
- e. Description of the hearing procedures pursuant to 20.1.4 NMAC, including requirements for filing an Entry of Appearance and a Statement of Intent to Present Technical Testimony, and requirements for submitting public comment;
- f. Contact information to obtain copies of applicable rules or additional information;
- g. Information on how to access an electronic copy of the Application

[NMED Ex. 1, p.20].

141. The information contained in the notice meets the content requirements for a notice of hearing as specified by the Act and NMED's Permit Procedures. [NMED Ex. 1, p.20; Tr. 47:01-50:41].

142. The hearing notice was translated into Spanish by Ana Maria MacDonald. Ms. MacDonald is the Translation Program Manager employed by the Department. [NMED Ex. 1, p.20].

## **VI. Public Notice Actions**

143. The Department met all requirements for public notice actions for the notice of public hearing. [Tr. 47:01-50:41].

### **A. Mailings**

144. As required by 20.9.3.17(C)(2) NMAC, the Applicant provided a certification to the Bureau stating that the list of individuals and entities included with the certification own property within 100 feet of the Facility. [AR No. C-9; NMED Ex. 1, p.20].

145. Since the Facility is located in a Class A county, mailing of the hearing notice to owners of property within 100 feet of the Facility is required by the Solid Waste Act. The Bureau prepared a public notice mailing list for owners of property within 100 feet of the facility and submitted this list to the Hearing Clerk on September 10, 2021. [AR No. C-10; NMED Ex. 1, p.21].

146. The Hearing Clerk informed the Bureau that she mailed notice of the hearing to property owners to fulfill the requirements of NMSA 1978, §§ 74-9-22 and -23. [NMED Ex. 1, p.21].

147. Mailing of notice to municipalities and counties in which the Facility is located, and to counties, municipalities, Indian tribes, and pueblos having territorial boundaries within ten (10) miles of the Facility is required by the Solid Waste Act. The Bureau prepared a public notice mailing list for counties and municipalities and submitted the list to the Hearing Clerk on September 10, 2021. [AR No. C-9; NMED Ex. 1, p.21].

148. There are no Indian tribes or pueblos with territory within 10 miles of CCRC. [NMED Ex. 1, p.21].

149. The Hearing Clerk informed the Bureau that she mailed notice of the hearing to municipalities and counties to fulfill the requirements of NMSA 1978, §§ 74-9-22 and -23. [NMED Ex. 1, p.21].

150. The Bureau prepared a public notice mailing list of potentially interested persons. This list contains persons or entities that received the notice of Application filing from the Applicant. The Bureau submitted this mailing list to the Hearing Clerk on September 10, 2021. [AR No. C-10; NMED Ex. 1, p.21].

151. As these persons and entities were previously informed of the permit Application for CCRC, the Hearing Clerk informed the Bureau she mailed notice to them as a courtesy. [NMED Ex. 1, p.21].

152. Mailing of hearing notices to persons who make written requests to the Department for notice regarding specific solid waste facility permit applications is required by the Solid Waste Act, NMSA 1978, § 74-9-23. The Bureau did not receive any written requests regarding the application for CCRC. [NMED Ex. 1, p.21].

## **B. Publication**

153. The Bureau managed tasks associated with publication of notice in a newspaper in accordance with NMSA 1978, § 74-9-22 and -23. [NMED Ex. 1, p.22].

154. On October 1, 2021, the hearing notice was published in the Las Cruces Sun-News in English and Spanish as a legal advertisement and a display advertisement. [AR No. C-12; NMED Ex. 1, p.22].

155. The Las Cruces Sun-News was chosen for publication of the hearing notice because it meets the statutory requirements for publication of notice in a newspaper. The Las Cruces Sun-

News is a newspaper that is published in the county (Doña Ana County) where the Facility is located and is a newspaper of general circulation. [NMED Ex. 1, p.22].

156. The Las Cruces Sun-News meets the requirements for publication of notice contained in NMSA 1978, § 74-9-22 and NMSA 1978, § 14-11-2 for the public hearing on the application for CCRC. [NMED Ex. 1, p.22].

157. The Application was deemed complete by the Bureau on August 3, 2021 and the Notice of Completeness Determination was filed with the Hearing Clerk on the same day. [AR No. C-8; NMED Ex. 1, p.22].

158. The hearing notice was published in the Las Cruces Sun-News within 60 days after the Application was deemed complete, thereby meeting the requirement specified in NMSA 1978, § 74-9-23 regarding provision of notice within 60 days after an application is deemed complete. [NMED Ex. 1, p.22].

159. The hearing notice was published 40 days prior to the scheduled hearing. [NMED Ex. 1, p.22]

### **C. Posting**

160. The Bureau posted the hearing notice at the following locations on September 28, 2021: Diamond Shamrock Gas Station (505 McCombs Rd #515, Chaparral, NM 880810); Lava Express Laundromat (404 McCombs Rd, Chaparral, NM 88081); Stires Super Market (304 McCombs Rd, Chaparral, NM 88081); Dollar General (328 McCombs Rd, Chaparral, NM 88081); and South Central Collection Center and Recycling Center (front gate, 180 McCombs Rd., Chaparral, NM 88081). [AR No. C-11; NMED Ex. 1, p.22-23].

161. The requirement specified in NMSA 1978, § 74-9-23 regarding posting of notice at four or more publicly accessible and conspicuous locations, including the facility entrance, was met. [NMED Ex. 1, p.23].

162. The Application was deemed complete by the Bureau on August 3, 2021 and the Notice of Completeness Determination was filed with the Hearing Clerk on the same day. Hearing notices were posted within 60 days after the Application was deemed complete and 43 days prior to the scheduled hearing. [NMED Ex. 1, p.23].

163. Posting of the hearing notice on the Department's website was arranged by the Hearing Clerk to fulfill the requirements specified in NMSA 1978, § 14-11-10.2 regarding electronic posting of legal notices. [NMED Ex. 1, p.23].

164. Posting on the Department's website occurred on September 30, 2021. [AR No. C-11A; NMED Ex. 1, p.23].

165. The link for the English notice is: <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2021/09/2021-09-07-RPD-SWB-Chaparral-Collection-and-Recycling-Center-Public-Hearing-Notice-English-final.pdf> and the link to the Spanish notice is: <https://www.env.nm.gov/opf/wp-content/uploads/sites/13/2021/09/2021-09-09-RPD-SWB-Chaparral-Collection-and-Recycling-Center-Public-Hearing-Notice-Spanish-final.pdf>. [NMED Ex. 1, p.23].

## **VII. Administrative Record Preparation**

166. The administrative record includes the final version of the Application, Bureau correspondence containing Application review comments, and documents used by the Bureau for review of the Application. [NMED Ex. 3, p.5].

167. Disclosure statements and investigative reports prepared by NMDPS are not included in the Administrative Record as these documents are confidential. [NMED Ex. 3, p.5].

168. In accordance with 20.1.4.200(A)(2) NMAC, the Bureau forwarded the Administrative Record to the Hearing Clerk prior to the November 10, 2021 hearing. [NMED Ex. 3, p.5].

169. The Administrative Record index is marked as NMED Exhibit 5.

### **VIII. Compliance History**

170. The Facility is currently a registered collection center, which does not require compliance inspections by the Bureau. Once the Facility is granted a transfer station permit under this proceeding, it will be subject to compliance inspections by the Bureau. [Tr. 52:18-53:22].

### **IX. Disclosure Statements and Grounds for Permit Denial or Revocation**

171. The Applicant submitted required disclosure statements (Governmental Entity Disclosure Statement; Key Employee Disclosure Statement) on September 24, 2020 in response to a Bureau comment provided in the First Request for Additional Information regarding the permit Application. [NMED Ex. 3, p.3].

172. The Governmental Entity Disclosure Statement was certified by Patrick Peck, Director, South Central Solid Waste Authority. [NMED Ex. 3, p.3].

173. Key Employee Disclosure Statements were provided for Patrick Peck, Rafael Leos (Deputy Director, South Central Solid Waste Authority), Eduardo Sanchez (Manager, Chaparral Collection and Recycling Center), and Miguel Fernandez (Program Administrator, South Central Solid Waste Authority). [NMED Ex. 3, p.3].



174. The Bureau transmitted the Key Employee Disclosure Statements to NMDPS for performance of background investigations and preparation of investigative reports. [AR No. C-4; NMED Ex. 3, p.3].

175. The disclosure statements and investigative reports were evaluated by NMED to determine if denial of the permit Application would be justified due to the occurrence of behaviors or incidents of a nature described in NMSA 1978, Section 74-9-24(B). [NMED Ex. 3, p.4].

176. The disclosure statements and investigative reports do not indicate the occurrence of behaviors or incidents of a nature described in NMSA 1978, Section 74-9-24(B). [NMED Ex. 3, p.4].

177. South Central Solid Waste Authority has also affirmed there have not been any behaviors or incidents as described in NMSA 1978, Section 74-9-24. [AR No. C-9, Volume IV, Section 3; NMED Ex. 3, p.4].

178. Therefore, denial of the Application on these grounds is not recommended by the Bureau. [NMED Ex. 3, p.4].

179. A permit application may also be denied if the Secretary finds that granting a permit would be contradictory to, or in violation of, the Act or any regulation adopted under it, or if the applicant fails to meet financial responsibility requirements. NMSA 1978, § 74-9-24(A).

180. Review of the Application by the Bureau indicates that all applicable requirements of the Act and Rules are met, including compliance with financial assurance requirements. Therefore, the Bureau does not recommend denial of the Application for the reasons identified in NMSA 1978, Section 74-9-24(A). [NMED Ex. 3, p.4].

181. The Rules at 20.9.3.19(A) NMAC identify several additional circumstances that provide justification for the Secretary's denial of a permit application or revocation of a permit.

These circumstances include a material violation of any term or condition of a permit; failure to fully disclose all material facts in an application; a determination that the permitted activity would endanger public health, welfare, or the environment; failure of the owner or operator to demonstrate the knowledge and ability to operate a solid waste facility in accordance with the Rules; and a history of non-compliance by the facility owner or operator with environmental statutes or regulations at another facility. [NMED Ex. 3, p.4].

182. The disclosure statements and investigative reports do not indicate the occurrence of behaviors or circumstances of a nature described in 20.9.3.19(A) NMAC, and the Bureau is not aware of information that indicates the occurrence of any such circumstances. Therefore, the Bureau does not recommend denial of the Application under 20.9.3.19(A) NMAC. [NMED Ex. 3, p.4].

#### **X. Proposed Permit Conditions**

183. In response to submittal of a permit application for a solid waste facility, the Secretary of NMED is authorized to issue a permit, issue a permit with conditions, or deny a permit application after the application has been deemed complete and a public hearing has been held. NMSA 1978, § 74-9-24(A).

184. It is the Bureau's opinion that the Application for Chaparral Collection and Recycling Center meets the requirements of the Act and Rules for issuance of a solid waste facility permit. [NMED Ex. 3, p.6].

185. The Bureau recommends issuance of the solid waste facility permit for Chaparral Collection and Recycling Center subject to the following conditions:

- a. The Applicant shall accept only the following materials as defined by the New Mexico Solid Waste Rules:

- i. Municipal Solid Waste, as defined at 20.9.2.7(M)(8) NMAC.
- ii. Source-separated Recyclable Materials, as defined at 20.9.2.7(S)(12)

NMAC and 20.9.2.7(R)(3) NMAC

- b. The Applicant shall comply with the applicable provisions of the New Mexico Solid Waste Act and Rules and the final Application (received by the Solid Waste Bureau on August 12, 2021) and shall operate Chaparral Collection and Recycling Center in accordance with all requirements specified herein. This condition is to remind the Applicant that all applicable Rules, permit conditions, terms of the Application, operational plans, and the Secretary's Final Order as approved must be understood and complied with throughout the permit term for this Facility.
- c. The final version of the Application received by the Solid Waste Bureau on August 12, 2021 shall become the permit and shall be enforceable pursuant to the New Mexico Solid Waste Act and Rules.
- d. Within thirty (30) days of the Secretary's approval of the Application, the Applicant shall have a copy of the final version of the Application, Final Order, and approved permit conditions readily available at the Facility for reference by operators at all times.
- e. Within thirty (30) days of the Secretary's approval of the Application, the Applicant shall prepare separate copies of the Plan of Operations and Contingency Plan and place them in easily accessible locations in marked files at the Facility for use by operators and staff.
- f. Within thirty (30) days of receipt of a Notice of Inspection noting violations or a Notice of Violation, the Applicant shall provide training to Facility staff as

applicable regarding the alleged violations to ensure future compliance with all applicable requirements. Records documenting the name of the trainer, names of staff receiving training, and the date of training shall be placed in the Facility operating record.

- g. Any proposed changes to Facility operations or waste screening protocols must be submitted to the Solid Waste Bureau in the form of a revised Plan of Operations or Waste Screening and Inspection Plan for Solid Waste Bureau review. Such proposed changes shall not be implemented until written Solid Waste Bureau approval is granted. The requirements of this Condition do not apply to Table II.1.3 (staffing list) or Attachment II.1.A (operator certifications) of the Plan of Operations.
- h. The Applicant shall immediately amend the Contingency Plan when personnel changes affecting the primary or alternate emergency coordinators occur or other circumstances identified by 20.9.5.15(E) NMAC occur. The amended Contingency Plan shall be submitted to the Solid Waste Bureau, and immediately following its receipt by the Solid Waste Bureau, in accordance with 20.9.5.15(C) NMAC, the revised Contingency Plan shall be provided to the emergency response authority of the local emergency management center.
- i. Within sixty (60) days of the Secretary's approval of the Application, the Applicant shall submit a written description of arrangements with other agencies (i.e., police, fire department, hospitals, contractors, and state/local emergency response team as appropriate) to coordinate emergency services for the Facility as an addendum to

the Contingency Plan, Volume II, Section 2 of the final Application. The description shall provide:

- i. name of each agency;
  - ii. date and location of coordination meeting;
  - iii. primary points-of-contact for the agency;
  - iv. description of the equipment, expertise and assistance that the agency could provide in the event of an emergency;
  - v. agency's estimated response time to the Facility;
  - vi. indication whether unaccompanied after-hours access to the Facility would be granted to the agency through the sharing of keys or codes for the Facility's access gates, or by other means;
  - vii. acknowledgement that the agency was apprised of potential contaminants and the types of incidents that could occur at the Facility;
  - viii. agency's failure or unwillingness to participate with the Facility regarding the Contingency Plan and related coordination efforts (when applicable).
- j. The Applicant shall train appropriate Facility staff when hired and at least annually thereafter on portions of the Plan of Operations, Contingency Plan, and Waste Screening and Inspection Plan applicable to their job duties and shall place documentation of such training in the Facility operating record. Training documentation shall include the Plan name, name of the trainer, names and signatures of staff receiving training, and the date of training.
- k. Within thirty (30) days of the Secretary's approval of the Application, the Applicant shall provide the Solid Waste Bureau with a copy of the resolution approved by

South Central Solid Waste Authority's governing body establishing a local government reserve fund in accordance with 20.9.10.20 NMAC.

- l. The Applicant shall make payments into the local government reserve fund at least annually over the term of the initial permit in accordance with 20.9.10.20(A) NMAC and 20.9.10.14(B) NMAC. The initial payment into the local government reserve fund shall be made within sixty (60) days of the Secretary's approval of the Application. Documentation of the initial payment shall be provided to the Solid Waste Bureau within ninety (90) days of the Secretary's approval of the Application. Documentation of subsequent payments into the local government reserve fund, reserve fund balance, and updated Facility closure cost estimates shall be submitted with the Facility's annual reports in accordance with 20.9.5.16(D) NMAC. This condition does not preclude the Applicant from making payments into the local government reserve fund at frequencies or amounts exceeding the requirements of 20.9.10.20(A) NMAC and 20.9.10.14(B) NMAC.
- m. The Applicant shall include a reference to closure costs for Chaparral Collection and Recycling Center in all future comprehensive annual financial reports for South Central Solid Waste Authority to allow auditing of the local government reserve fund in accordance with 20.9.10.20(A) NMAC.

[NMED Ex. 3, pp. 6-10].

### **PROPOSED CONCLUSIONS OF LAW**

1. The Secretary of the Department has jurisdiction over the subject matter of the Application and the parties to this proceeding and is authorized by the Solid Waste Act to issue or deny permits for new and existing solid waste facilities based upon information submitted in a

permit application and relevant information received during the public hearing. NMSA 1978, § 74-9-24.

2. The Secretary of the Department may issue permits and approve modifications to existing permits for publicly or privately owned solid waste facilities for a maximum period of 20 years, and each permit issued under the rules is to be reviewed by the Department at least every five years for privately owned facilities. NMSA 1978, § 74-9-24(G)(1).

3. No person shall construct, operate, or close a solid waste facility unless the facility has a permit from the Secretary for the described action. NMSA 1978, § 74-9-31(A)(3).

4. The Solid Waste Rules require that any person seeking to construct, operate, modify or close a solid waste facility shall first obtain a permit. 20.9.3.8(A) NMAC.

5. The Chaparral Collection and Recycling Center is a solid waste facility and is subject to the requirements of the Solid Waste Act and the Solid Waste Rules, pursuant to 20.9.2.7(S)(11) NMAC.

6. The Rules identify a transfer station as a solid waste facility, which pursuant to the Act, requires a permit. 20.9.2.7(S)(11) NMAC; NMSA 1978, § 74-9-20(A).

7. The Chaparral Collection and Recycling Center meets the definition of a transfer station, pursuant to 20.9.2.7(T)(3) NMAC.

8. The Application complies with all regulatory requirements of the Solid Waste Act and the Solid Waste Rules related to the ongoing and proposed operation, maintenance, closure and post-closure care of the Facility as a solid waste facility and as a transfer station.

9. The Applicant complied with all requirements of the Solid Waste Act and the Solid Waste Rules for filing its Application for permit renewal.

10. Notice of the public hearing on the Application was provided as required by the Solid Waste Act, 20.1.4 NMAC, Publication of Notice Act, the Scheduling Order(s), and the August 27, 2021 pre-hearing conference.

11. The conditions proposed by the Bureau in paragraph 185 above are reasonable.

12. The conditions proposed by the Bureau in paragraph 185 above are necessary to ensure that the Facility operates in a manner that protects health, welfare and the environment and will ensure compliance with the Solid Waste Act and the Solid Waste Rules and should be included in the permit, if granted.

### **SOLID WASTE BUREAU CLOSING ARGUMENT**

The Bureau, on behalf of the Resource Protection Division of the New Mexico Environment Department, recommends approval of the permit for the Facility, provided that the Applicant complies with the permit conditions outlined in paragraph 185 above. Based on the information contained in the Application, the written testimony submitted by the Bureau and SCSWA, the record proper, and the oral testimony by the Bureau and SCSWA at the hearing, and the applicable law, the Bureau respectfully requests that the Hearing Officer adopt and incorporate this Joint Proposed Findings of Fact and Conclusions of Law in the Hearing Officer's Report to the Secretary.

### **SOUTH CENTRAL SOLID WASTE AUTHORITY CLOSING ARGUMENT**

SCSWA respectfully requests approval of the permit for the Facility. SCSWA's Application, the written testimony submitted by the Bureau and SCSWA, the record proper, and the oral testimony by the Bureau and SCSWA at the hearing, and the applicable law, support the granting of the permit. SCSWA agrees to comply with the permit conditions outlined in paragraph 185 above. SCSWA further respectfully requests that the Hearing Officer adopt and incorporate



this Joint Proposed Findings of Fact and Conclusions of Law in the Hearing Officer's Report to the Secretary.

Respectfully Submitted,  
SOLID WASTE BUREAU  
NEW MEXICO ENVIRONMENT DEPARTMENT

/s/ Christal Weatherly  
Christal Weatherly  
Assistant General Counsel  
New Mexico Environment Department  
121 Tijeras Avenue NE, Suite 1000  
Albuquerque, NM 87102  
Ph: (505) 490-0681  
Email: [christal.weatherly@state.nm.us](mailto:christal.weatherly@state.nm.us)

*Counsel for the Solid Waste Bureau*

SOUTH CENTRAL SOLID WASTE AUTHORITY

/s/ Deana Bennett  
Deana Bennett  
Modrall Sperling  
PO Box 2168  
Albuquerque, NM 87102  
Phone: 505.848.1834  
[deana.bennett@modrall.com](mailto:deana.bennett@modrall.com)

*Counsel for South Central Solid Waste Authority*

### **CERTIFICATE OF SERVICE**

I hereby certify that the preceding **Joint Findings of Fact and Conclusions of Law** was sent via electronic mail on this 14<sup>th</sup> day of December 2021, to the following:

Madai Corral  
Hearing Clerk  
Office of Public Facilitation  
New Mexico Environment Department  
1190 S. St. Francis  
Santa Fe, NM 87505  
505-490-5803  
Email: madai.corral@state.nm.us

Deana Bennett, Esq.  
Modrall Sperling  
PO Box 2168  
Albuquerque, NM 87102  
Phone: 505.848.1834  
deana.bennett@modrall.com

*Counsel for South Central Solid Waste Authority*

/s/ Christal Weatherly  
Christal Weatherly  
Assistant General Counsel  
New Mexico Environment Department